UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,093	07/25/2003	Richard D. Ciervo	AO694	2242

7590 07/17/2006	EXAMINER
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DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/627,093	CIERVO, RICHARD D.
	Examiner	Art Unit	
	Nicole R. Kramer	3762	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _17 May 2006_.
2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-3,5-15 and 18-21_ is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) _1-3,5-15 and 18-21_ is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

Claim Objections

1.   Claims 8-13 are objected to because of the following informalities:

Claim 8 currently recites the step of "determining when the sampled heartrate

value is above the effective threshold maximum value." According to the specification

at pages 8-9, it appears that this described embodiment includes the step of

determining when the sampled heartrate value is *below* the effective threshold

maximum value, since this embodiment is directed towards suppressing the alert that

the user is above the maximum value until the sampled heartrate first dips to or below

the threshold maximum value. If so, appropriate correction is required.

Claim Rejections - 35 USC § 112

2.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

3.   Claims 1 and 8-14 are rejected under 35 U.S.C. 112, second paragraph, as

being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention.

Claim 1 currently recites "until a sampled biomedical value is determined to

satisfy the effective condition." It is unclear whether the sampled biomedical value is

the same sampled biomedical value previously introduced in the claim, or whether a

second sampled biomedical value is being introduced.

Similarly, claim 8 current recites "until the effective threshold maximum value is greater than a sampled heart rate." It is unclear whether the sampled heart is the same sampled heart rate previously introduced in the claim, or whether a second sampled heart rate is being introduced.

Similarly, claim 14 current recites "until a sampled heart rate is determined to be within the effective Target Zone." It is unclear whether the sampled heart is the same sampled heart rate previously introduced in the claim, or whether a second sampled heart rate is being introduced.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5.   Claims 1-3, 5-15, and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication 2002/0045517 ("Oglesby et al."), which corresponds to U.S. Patent No. 6,783,482.

With respect to claims 1 and 14, Oglesby et al. discloses a method of generating an out of zone alert (Examiner is considering the message "Leaving Target HR Zone" to be the claimed out of zone alert; see step 182 of Figure 13 and associated text at paragraph 0041) when a sampled heart rate is outside an effective Target Zone

(Examiner is considering the claimed Target Zone to be between the HR Low Zone and the HR High Zone shown in step 172 of Figure 13). As apparent from the flowchart of Figure 13, the "Leaving Target HR Zone" message is not generated until the sampled heart rate is first determined to be within the effective Target Zone (message of step 182 is not generated when the user's heart rate is outside the zone if the answer to step 180 is "no" - that is, the user was not previously in zone and the target HR was not already reached). The flowchart includes the step of determining when a sampled heart rate is first within the effective Target Zone (see steps 172, 176, and 178 which lead to the message "Entering Target HR Zone" when the user first reaches the Target HR Zone). After the user has entered the zone, generation of the "Leaving Target HR Zone" message is permitted when sampled heart rate is determined to be outside the effective Target Zone (message of step 182 is generated if (1) the user's heart rate is outside the zone via answering "no" to step 172 and (2) the user was previously in zone and the target HR was already reached via answering "yes" to step 180).

With respect to claims 2, 3, and 5, Examiner is considering the "HR Low Zone" of step 172 to be the claimed effective threshold minimum value. As apparent from the flowchart of Figure 13, the "Leaving Target HR Zone" message is not generated until the sampled heart rate has reached the threshold minimum value (message of step 182 is not generated when the user's heart rate is outside the zone if the answer to step 180 is "no" - that is, the user was not previously in zone and the target HR was not already reached). The flowchart includes the step of determining when a sampled heart rate is at or above the threshold minimum value (see steps 172, 176, and 178 which lead to

the message "Entering Target HR Zone" when the user first reaches the Target HR

Zone). After the user has entered the zone, generation of the "Leaving Target HR

Zone" message is permitted when the sampled heart rate is determined to fall below the

threshold minimum value (message of step 182 is generated if (1) the user's heart rate

is outside the zone via answering "no" to step 172 and (2) the user was previously in

zone and the target HR was already reached via answering "yes" to step 180). With

respect to claim 3, the system controller of Oglesby et al. necessarily enables the

indicator so that the "Leaving Target HR Zone" alert may be generated as appropriate.

With respect to claim 6, the alert is displayed visually (see paragraph 0041).

With respect to claim 7, a user may input a target heart rate into the heart rate

monitoring system at step 160 of Figure 3 (see paragraph 0040). The controller

inputs/calculates the target heart rate zone using the target heart rate in steps

162/166/168.

With respect to claims 8-11, Examiner is considering the "HR High Zone" of step

172 to be the claimed effective threshold maximum value. As apparent from the

flowchart of Figure 13, the "Leaving Target HR Zone" message is not generated until

the threshold maximum value is greater than a sampled heart rate (message of step

182 is not generated when the user's heart rate is outside the zone if the answer to step

180 is "no" - that is, the user was not previously in zone and the target HR was not

already reached). After the user has entered the zone, generation of the "Leaving

Target HR Zone" message is permitted when the sampled heart rate is determined to

be above the threshold maximum value (message of step 182 is generated if (1) the

user's heart rate is outside the zone via answering "no" to step 172 and (2) the user was previously in zone and the target HR was already reached via answering "yes" to step 180). With respect to claim 9, the system controller of Oglesby et al. necessarily enables the indicator so that the "Leaving Target HR Zone" alert may be generated as appropriate.

With respect to claim 12, the alert is displayed visually (see paragraph 0041).

With respect to claim 13, a user may input a target heart rate into the heart rate monitoring system at step 160 of Figure 3 (see paragraph 0040). The controller inputs/calculates the target heart rate zone using the target heart rate in steps 162/166/168.

With respect to claims 15 and 18-21, Examiner considers step 180 of Oglesby et al. to necessarily include the step of "determining whether the sampled heartrate fails to satisfy the effective condition for more than a predetermined continuous period of time." Step 180 determines whether the user's previous sampled heart rate was in the zone but the current sampled heart rate changes so as to no longer be in the zone. Since the step 180 is necessarily considering both the user's current sampled heart rate and the user's previous sampled heart rate, Examiner considers this span of considered events to satisfy the condition of "for more than a predetermined continuous period of time." If both the current and the previous sampled heart rates fail to be in the target zone, the "for more than a predetermined continuous period of time" condition is satisfied and the "Leaving Target HR Zone" message is not generated as shown in Figure 13 (that is, (1) the user's current sampled heart rate is outside the zone via answering "no" to step 172,

and (2) both the current and previous sampled heart rates are outside the zone via

answering "no" to step 180). The "Leaving Target HR Zone" message would continually

not be generated until step 180 is answered "yes," which requires that the user re-enter

the target zone (see steps 172, 176, and 178 which lead to the message "Entering

Target HR Zone" when the user re-enters the Target HR Zone). On the other hand, if

the current sampled heart rate fails to be in the target zone while the previous sampled

heart rate was in the target zone, the "for more than a predetermined continuous period

of time" condition is not satisfied and the "Leaving Target HR Zone" message is

generated at step 182 (that is, (1) the user's current sampled heart rate is outside the

zone via answering "no" to step 172, and (2) the previous sampled heart rate was in

zone via answering "yes" to step 180).

Response to Arguments

6.   With respect to claims 1-3 and 5-14, Applicant's arguments regarding the

rejection under Birnbaum et al. have been considered but are moot in view of the new

ground(s) of rejection.   Examiner notes that the rejection of claims 1-3 and 5-14 with

respect to Birnbaum et al. have not necessarily been overcome. However, Examiner

believes that Figure 13 of Oglesby et al. more clearly anticipates claims 1-3 and 5-14,

and thus has applied the new ground(s) of rejection above to further prosecution.

7.   With respect to claims 15 and 18-21, Applicant's arguments regarding the

obviousness rejection under Oglesby et al. have been considered but are moot in view

of the new ground(s) of rejection.   Examiner notes that the obviousness rejections of

claims 15 and 18-21 with respect to Oglesby et al. have not necessarily been overcome.

However, upon reconsideration of the Oglesby et al. reference, Examiner believes that

Figure 13 of Oglesby et al. anticipates claims 15 and 18-21 as described above.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Nicole R. Kramer whose telephone number is 571-272-

8792. The examiner can normally be reached on Monday through Friday, 8 a.m. to

4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NRK

6/29/06

George Manuel
Primary Examiner